

REDACTED PURSUANT TO SEPTEMBER 9, 2020 ORDER

12A

COMMONWEALTH OF MASSACHUSETTS

2020.
1954

SUFFOLK, ss.

SUPERIOR COURT
CIVIL ACTION NO.

COMMONWEALTH OF MASSACHUSETTS,

Plaintiff,

v.

CREDIT ACCEPTANCE CORPORATION,

Defendant.

COMPLAINT

RECEIVED

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I. INTRODUCTION

1. The Commonwealth of Massachusetts, by and through its Attorney General Maura Healey, brings this enforcement action in the public interest pursuant to the Massachusetts Consumer Protection Act, G. L. c. 93A, § 4. The Commonwealth alleges that Credit Acceptance Corporation ("CAC") made unfair or deceptive automobile loans to Massachusetts consumers, engaged in unfair acts or practices related to collection of loans and repossession of automobiles, and sold securities to Massachusetts investors based on offering materials that contained materially false or misleading statements.

2. Between 2013 or earlier and the present, CAC made high-risk high-interest subprime auto loans to Massachusetts borrowers whom CAC knew or should have known were unable to repay their loans. When it approved and funded the loans, CAC recklessly ignored the likelihood that the borrowers would default on their loans. When it approved and funded the loans CAC knew, based on its own risk score (the "expected collection rate"), that a substantial

portion of its loans to high-risk low-score borrowers would never be repaid—CAC knew, based on its own collection, repossession, and deficiency data, and on its historical default data, that the performance of its loans was consistently abysmal, and that well over 50% of high-risk low-score borrowers would default, typically a little more than a year into their loans.

3. CAC ignored the poor performance of its high-risk low-score loans and was indifferent to the inability of Massachusetts consumers to repay the loans because in spite of the high level of defaults, CAC earned substantial profits on its high-risk Massachusetts loans.

4. While CAC profited, however, default was catastrophic for borrowers, who lost their cars and their down payments, whose credit was damaged, and who were left with an average debt after default of about \$9,000, which CAC continued to collect through unlawful and aggressive collection processes.

5. Between 2012 and mid-2018, CAC collection employees harassed Massachusetts consumers by calling them as often as *eight times a day*, Massachusetts law permits no more than two calls *per week*. Over this roughly six-year period, CAC made about 1.5 million collection calls in violation of Massachusetts law.

6. When borrowers defaulted and CAC repossessed their cars, CAC failed to use the cars' fair market value to calculate any remaining loan deficiency. CAC's repossession notices to borrowers in connection with the deficiency were in violation of Massachusetts law.

7. CAC's borrowers were also subject to hidden finance charges on their CAC loans; many borrowers were required to purchase vehicle service contracts as a condition of obtaining CAC loans, which added about \$2,500, on average, to the amount of their loans. In addition, CAC dealers added an extra markup to the prices of vehicles they sold to high-risk borrowers with poor credit or low scores; the extra markup was a hidden finance charge that was never

disclosed to borrowers. Including the amount of the hidden finance charges in the calculation of the borrowers' interest rates results in an actual interest rate higher than the Massachusetts usury ceiling of 21% for virtually all CAC borrowers subject to these charges.

8. In order to fund its loans, CAC sold securities to (*inter alia*) Massachusetts investors by means of false or misleading statements concerning the characteristics of the loans and contracts collateralizing the securities.

9. The Commonwealth seeks restitution, disgorgement, statutory damages, and other relief for Massachusetts borrowers harmed by CAC's unfair or deceptive acts or practices. In addition, the Commonwealth seeks civil penalties of \$5,000 per violation. The complaint also seeks injunctive relief to remedy and prevent additional harm arising from CAC's unfair or deceptive acts or practices, together with the costs of investigating and prosecuting this action, including reasonable attorneys' fees.

II. JURISDICTION AND VENUE

10. The Attorney General is authorized to bring this action pursuant to G. L. c. 93A, § 4 and G. L. c. 12, § 5. This Court has jurisdiction over the defendants pursuant to G.L. c. 223A, § 3. The Court has jurisdiction over the subject matter of this action pursuant to G.L. c. 93A, § 4.

11. Venue is proper in Suffolk County pursuant to G. L. c. 223, § 5, and G. L. c. 93A, § 4.

III. THE PARTIES

12. The Plaintiff is the Commonwealth of Massachusetts, represented by the Attorney General, who brings this action in the public interest. The Commonwealth also has standing *parens patriae* to protect the health and well-being, both physical and economic, of its residents.

13. The Defendant, CAC, is a Michigan corporation headquartered in Southfield, Michigan. Since 2013 or earlier, it has done business in Massachusetts.

14. Whenever in this Complaint reference is made to any act, deed, or transaction of any corporation, the reference means that the corporation engaged in such act, deed, or transaction by or through its officers, directors, agents, employees, or other representatives while they were actively engaged in the management, direction, control, or transaction of its business affairs.

IV. STATEMENT OF FACTS

15. Founded in 1972, CAC is one of the largest subprime auto lenders in the country. In 2017 CAC was the fifth largest lender to borrowers with credit scores under 650, and the second largest lender (after Wells Fargo) to borrowers with credit scores under 530.

16. From at least 2013 or earlier through the present, CAC has made subprime auto loans to borrowers in Massachusetts.

17. In 2019, CAC funded about 370,000 subprime auto loans countrywide. Over 95% of CAC's loans are subprime loans. CAC's revenue in 2019 was about \$1.5 billion, and its net income was \$656 million. CAC is publicly traded on NASDAQ, and has a current market capitalization of about \$8 billion.

18. A substantial portion of CAC's loans are never repaid.

A. CAC'S SUBPRIME LOAN BUSINESS MODEL

19. Between 2013 and 2019, CAC funded approximately 4,000 subprime used car loans annually in Massachusetts, with an aggregate value of \$458 million.¹

¹ Unless otherwise specified, the Massachusetts data represent loans originated between 2013 and the end of 2019, excluding dealer-canceled loans.

20. CAC's business model allows all applications for loans to be approved and funded.

21. CAC has funding arrangements with numerous dealers in Massachusetts; CAC refers to these dealers as its "dealer-partners." When a consumer buys a car from one of the dealers and submits a loan application through the CAC computer portal at the dealer, CAC funds the loan.

22. Substantially all of CAC's customers have impaired or limited credit. Many of CAC's customers have higher debt-to-income ratios than those permitted by traditional lenders. Virtually all CAC borrowers have experienced financial problems in the past, or have serious credit issues. CAC's policy of funding loans for all applicants causes dealers to sell cars to buyers who otherwise would be unable to obtain a loan—buyers who, without CAC's loans, would not incur debts they cannot afford to repay.

23. At origination CAC expects to collect, on average, approximately 70 cents of every loan dollar owed by Massachusetts borrowers (*see infra*, ¶ 82). The remaining 30 cents of every loan dollar will remain unpaid.

24. CAC derives most of its revenues (about 92%) from finance charges. These finance charges include monies earned on CAC's loans and amounts earned from the sale of vehicle service contracts.

1. The Loan Process

25. When a consumer buys a used car from one of CAC's dealer-partners, the consumer applies for a loan through CAC's proprietary computer portal, the Credit Approval Processing System (referred to by CAC as "CAPS"). CAC approves the loan, typically within 60 seconds, and CAPS displays the terms of the loan, including the amount of the loan and the

borrower's monthly payment. If the borrower wants to obtain the loan, the borrower must agree to CAC's terms.

26. The CAC loan is originated when the consumer signs the contract of sale. The contract—which, together with all financing documents and disclosures, is created by CAC's CAPS system—requires the consumer to make a down payment to the dealer (averaging about 20% of the car price, including the cash down payment and net trade-in value of the prior vehicle); all other amounts related to the purchase are funded in the loan.

27. The amount of the loan consists of the total principal and interest the consumer is required to pay over the term of the consumer loan.

28. Since 2014, the vast majority of CAC loans in Massachusetts have had interest rates of 20.99% (the Massachusetts usury ceiling is 21%).

29. The decision to fund the loan is made solely by CAC. The amount of the funding is determined solely by CAC. CAC performs all significant functions relating to the process of the loan application, including assessment of the application and verification of consumer information, such as employment, income, and residence.

30. CAC does not loan funds directly to the consumer. Instead, after the consumer has signed the sales contract, CAC makes a payment to the dealer, and in exchange for CAC's payment the dealer immediately assigns the loan to CAC. Apart from the down payment, CAC's payment to the dealer is the only payment the dealer receives (in some cases broken into more than one part, *see infra* ¶ 36), and the only cash funding involved in the sale.

31. Under CAC's arrangement with the dealer, the assignment of the loan to CAC occurs automatically as soon as the contract is signed and transmitted to CAC in either physical or electronic form.

32. Although the dealer and not CAC is the nominal party to the loan contract, the dealer has no role in approving, making, documenting, funding, holding, servicing, or collecting the loan. The dealer generally does not have legal ownership of the consumer loan for more than "a moment" (CAC's term) before it is assigned to CAC, which then takes possession of the loan.

33. Both before and after the assignment occurs CAC controls all aspects of the loan process:

- CAC unilaterally approves the loan;
- CAC provides the funding for the loan;
- CAC creates and transmits the loan package through CAPS;
- CAC determines the amount of the loan and of the funding payment to the dealer;
- the loan is written on a contract form provided by CAC;
- CAC creates and executes all contract documents required for the loan;
- CAC sets the terms and conditions of the loan, including terms of prepayment, default and acceleration, repossession, and sale;
- through CAPS, CAC calculates and supplies all federal consumer disclosures, including the finance charge disclosures required under TILA, and verifies compliance with any State law requirements;
- CAC is the lien holder on the vehicle title;
- consumers are required to make all loan payments, including the first, directly to CAC;
- CAC makes available vehicle service contracts for the dealer to sell ("VSCs"); arranges with vendors to administer the VSCs, and either assumes the VSC risk or shares third-party profits related to the VSC;

- CAC services the loan;
- when a consumer misses a loan payment CAC pursues collection actions; and
- CAC repossesses and resells the car² when borrowers are unable to repay their loans, and CAC then collects any deficiency after repossession and resale.

2. CAC's Financing Programs

34. CAC offers two financing "programs" to dealers, which it refers to as the "Portfolio" and "Purchase" programs. The consumer loans—and CAC's role in approving, making, documenting, holding, servicing, and collecting on the loans—are the same for both programs.

35. The primary differences between the programs are in (i) the timing and amount of CAC's payment to the dealer, and (ii) the pooling of loans.

i. Timing and amount of dealer payment.

36. Under the Purchase program, CAC makes its entire payment to the dealer up front, when the loan is assigned. Under the Portfolio program, the bulk of the payment (about 87% on average in Massachusetts between 2013 and 2019), is made to the dealer up front, at the time of assignment, while the remainder of the payment, which CAC calls the "holdback," is not paid until CAC collects the entire amount of its upfront payment to the dealer (together with CAC's 20% finance charges on the collections and various fees and costs, *see infra*, ¶ 49³), and then only to the extent that CAC collects these funds from the borrower. If CAC does not collect the entire amount of its upfront payment, the dealer never receives any part of the holdback. If

² Repossession typically occurs when a consumer defaults unless the consumer redeems the car, or the cost of repossession exceeds the auction value of the vehicle.

³ The 20% finance charge reflects 20 cents of every collected loan dollar.

CAC does not collect a portion of the holdback, the dealer never receives that portion of the holdback. This arrangement allows CAC to reduce its risk and investment in the loan, and to increase its return on investment.

ii. *Pooling of loans under the Portfolio program.*

37. Under the Portfolio program, CAC "pools" or aggregates 100 (in most cases) loans; CAC takes funds from the repayment of loans in the pool for which it collects more than the amount of its upfront payment to the dealer (plus finance charges) to make up for any shortfall when borrowers default on other loans in the pool. For dealers with more than one pool, the pools are cross-collateralized. Collections from loans are applied on a pool-by-pool basis as follows:

- first, CAC is paid for certain collection costs;
- second, CAC is paid 20% of all collections (net of collection costs),
- third, CAC is paid the aggregate amount of its upfront payments for all loans in the pool,
- fourth, the dealer holdback, if any, is paid.

38. About 83% of CAC's Massachusetts loans between 2013 and 2019 were made under the Portfolio program, and 17% under the Purchase program.

3. Expected Collection Rate

39. For each loan, at the time of origination CAC determines the amount of the loan CAC believes it will ultimately collect. This metric, which CAC refers to as the "expected collection rate" (or simply the "score"), is stated as a percentage of the loan; a score of 100 (or 100%), for instance, means CAC expects to collect the entire amount of the loan; a score of 60

(or 60%) means CAC expects to collect 60% of the loan. The lower the expected collection, the lower the score.

40. The expected collection rate represents CAC's expectation, at the time it approves and funds the loan, of the proportion of the loan that will ultimately be repaid.⁴

41. CAC's expected collection rate includes collections from all sources, payment by the borrower prior to default, auction proceeds after the borrower defaults and the car is repossessed and resold, and deficiency collections.

42. The expected collection rate reflects the performance risk of the loan. It is based on numerous variables found in the borrower's credit report, together with quantitative data specific to the sales transaction. Examples of the approximately 20 credit-type variables used in the expected collection rate calculation are address changes, evictions, and prior bankruptcies. Of the approximately 50 transaction-specific variables, the most important factors are the contract term (a longer term reduces the score); the loan to value ratio ("LTV") (a higher LTV reduces the score); and the ratio of the borrower's monthly loan payment to the borrower's monthly income ("PTI") (a higher PTI reduces the score).

43. CAC determines the expected collection rate for each loan it funds. To calculate the expected collection rate, CAC compares a particular loan's borrower and transaction attributes to a database of over 20 years of historical collections for loans with similar attributes. The determination of the expected collection rate for a particular loan is substantially the same under both the Purchase and Portfolio programs.

44. CAC does not disclose the expected collection rate to the dealer or the borrower.

⁴ CAC updates the expected collection rate during the duration of the loan.

45. Since 2013 the expected collection rate of an average CAC loan has declined. In 2013 the expected collection rate of an average CAC loan in Massachusetts was 75.6%. In 2019 it was 66.0%.

Massachusetts Expected Collection Rates
By Origination Year

<u>Origination Year</u>	<u>Weighted Average Score⁵</u>
2013	75.6%
2014	74.9%
2015	71.8%
2016	68.8%
2017	67.2%
2018	66.4%
2019	66.0%
Mean	70.1%

46. There was a similar decline in CAC's average expected collection rate nationwide, from 72.0% in 2013 to 64.0% in 2019.

47. CAC's expected collection rate is the primary driver of CAC's funding payment for the loan. Based on the forecast of expected collections, CAC calculates the payment to the dealer at a level designed to maximize CAC's economic profit on the loan. CAC expects to collect substantially less than the total amount of the loan, and CAC's payment for the loan is substantially less than the amount of CAC's expected collection. The payment amount is communicated to the dealer through CAPS prior to the sale.

48. CAC's ability to accurately forecast collections under its loans is critical to CAC's business. In its investment materials CAC states that "CA[C]'s forecasted collection rates at loan origination for our Portfolio and Purchase Program have been very accurate," that

⁵ The weighted average score uses the loan amounts as weights.

CAC has been “[s]uccessful at predicting future performance of our loans at the time the loans are originated,” and “[t]he historical difference between actual collection results and those expected at loan origination is small.”⁶

49. The accuracy of CAC’s expected collection rate is critical because CAC’s finance charge income is based on the spread between CAC’s loan collections, on the one hand, and its loan payments to dealers on the other. Under both the Portfolio and Purchase programs, CAC sets its payment to dealers at a level that permits CAC to earn at least 20% of the expected loan collection amount as profit, *i.e.*, CAC collects, at a minimum, the amount of its payment to the dealer for the loan plus an additional 20% of the loan collections as finance charge compensation. Under the Portfolio program, CAC further reduces its upfront payment—and provides itself with an additional financial cushion—by capping the payment for each loan; the maximum upfront payment under the Portfolio program is [REDACTED] less than [REDACTED] of the expected collection rate, or $[(\text{[REDACTED]} * \text{expected collection rate}) - \text{[REDACTED]}]$. Under the Purchase program the expected collection rate is discounted, on average, by approximately 2%, which in turn reduces the maximum payment to the dealer. Further deductions may be made under either program based on the performance of the dealer’s prior loans and other factors.

50. Between 2013 and 2019 the expected collection rate of CAC’s average Massachusetts loan was 70.1%. CAC’s payment to Massachusetts dealers, on average, was about 44%—43% of an average loan under the Portfolio program, and 47.9% under the Purchase program.

⁶ During the ten-year period 2010 through December 31, 2019, on an average countrywide basis, CAC’s collection rate reflecting actual collections varied from CAC’s expected collection rate at origination by 0.7% for the Portfolio program, and 2.4% for the Purchase program.

Comparison of Massachusetts Expected Collection Rate to Dealer Payment

	<u>Portfolio Program</u>	<u>Purchase Program</u>	<u>Total</u>
1. Expected Collection Rate	70.3%	69.3%	70.1%
2. Dealer Upfront Payment	43.0%	47.9%	43.9%
3. Difference [(1) - (2)]	27.3%	21.5%	26.2%

51. For high-risk loans, CAC's expected collection rate is much lower, but CAC reduces its payment to dealers to keep the spread between the expected collection rate and the dealer payment roughly constant. CAC's method of scaling the dealer payment to the expected collections—and reducing dealer payments as the expected collection rate drops—permits CAC to earn comparable returns on high-risk loans with low expected collection rates and less risky loans with higher expected collection rates.

4. CAC's Profit on the Loan Transaction

52. The average CAC customer in Massachusetts between 2013 and 2019 purchased a used car with a cost to the dealer of about \$7,800, made a down payment to the dealer (including trade-in) of about \$2,400, and took out about a four-year loan of about \$17,600, representing about \$11,300 in principal and \$6,300 interest. The borrower's total payment obligation, about \$20,000 (the amount of the loan plus the down payment), was slightly more than two and half times the cost to the dealer of the car.

53. When it approved and funded the loan CAC expected to collect about \$12,400⁷ (expected collection rate at origination) of the \$17,600 in payments required under the terms of the average CAC Massachusetts loan. Of this amount, the borrower paid, on average about

⁷ Throughout, CAC's expected and actual collections are net of certain collection expenses.

\$10,500, or 85%; CAC collected approximately \$1,900, or about 15% of collections, from auction proceeds and deficiency collections after default and repossession of the car.⁸ The remaining \$5,200 (or just under 30%) of the \$17,600 loan would not be repaid.

54. On the average loan, CAC made an initial payment to the dealer of approximately \$7,800, about the same as the dealer's cost for the vehicle. CAC's payment to the dealer was about 44% of the loan amount.

55. The bulk of the spread between CAC's expected collection of about \$12,400 and CAC's payment to the dealer of about \$7,800 was CAC's profit on the average loan.⁹ This profit averaged a little over \$3,100, or about 40% of CAC's upfront payment to the dealer, a return that was similar under both the Portfolio and Purchase programs (see table *infra*, ¶ 57).¹⁰

56. On the average sales transaction, the dealer earned a profit of about \$2,600 (including the value of the trade-in), or about a third of the cost of the vehicle; the dealer's profit is slightly larger than the borrower's down payment.

⁸ These payments are based on the historical splits between borrower payments and other collections.

⁹ A portion of the difference between CAC's collections and the CAC's upfront payment to the dealer is used to make the holdback payment and to pay certain costs related to the vehicle service contract (see table *infra*, ¶ 57).

¹⁰ CAC's return is based on CAC's investment in the loan; CAC's collections, including the 20% finance charge income, are based on the total loan amount, which is considerably larger than CAC's investment (upfront payment to the dealer).

Dealer Profit & Return on Vehicle Cost

1. Total Down Payment	2,404
2. CAC Payment to Dealer	7,752
3. Expected Dealer Holdback	906
4. Vehicle Cost to Dealer	7,754
5. Sales Tax	617
6. Customer Fees Paid	114
7. Dealer Profit	2,577
8. Return on Vehicle Cost	33.2%

57. For high-risk low-score loans, borrowers repay a smaller portion of their loans, but CAC's return remains virtually unchanged. Indeed, CAC's return is slightly higher on high-risk low-score loans, in spite of the reduced collections, because the return depends on the spread between CAC's expected collection rate and CAC's payment to the dealer, rather than on the collection rate itself.

CAC % Return on Upfront Payment to the Dealer By Score Interval

	<u>Score < .6</u>	<u>Score < .7</u>	<u>All Loans</u>
1. Average Expected Collections	\$9,617	\$11,477	\$12,372
2. Average Upfront Payment to Dealer	\$5,995	\$7,251	\$7,752
3. Average Payout For VSC Costs	\$548	\$590	\$601
4. Average Expected Dealer Holdback Payments	\$569	\$704	\$906
5. Average CAC Dollar Return	\$2,505	\$2,932	\$3,113
6. CAC % Return on Upfront Payment (Line 2)	41.8%	40.4%	40.2%

B. CAC'S UNFAIR HIGH-RISK SUBPRIME LOANS

1. The Abysmal Performance of CAC's High-Risk Loans

58. CAC's loans are virtually all subprime. But many CAC borrowers—those with low expected collection rates or “scores”—have experienced intense forms of financial distress, such as previous bankruptcies, foreclosures, repossessions, judgments, or garnishment of wages, and are at higher than average risk of nonpayment of their CAC loans. While CAC profits from these high-risk low-score Massachusetts loans, the vast majority of the high-risk borrowers default on their loans.

59. Of 2013-2016 borrowers with CAC scores lower than 70% (CAC expects at origination to collect less than 70 cents of every loan dollar), 59.0% had defaulted as of December 31, 2019.¹¹ In addition, between 2.5% to 3% of the loans were non-performing; these are loans that are not being repaid but have not been formally charged off. Overall, about 62% of the loans with scores lower than 70% have defaulted or are non-performing.¹²

60. Of 2013-2016 loans with CAC scores lower than 60% (CAC expects at origination to collect less than 60 cents of every loan dollar), about 71% had defaulted or were non-performing as of December 31, 2019.

¹¹ A “defaulted” loan is a loan that CAC considers charged-off; CAC considers a loan charged-off when the loan is either 90 days past due or an auction check has posted to the account. CAC defines a “Defaulted Contract” as “each Contract that has become 90 days delinquent, based on the date the last payment thereon was received by the Servicer, or has had an auction check posted to the account.” (See *infra*, ¶90).

¹² December 31, 2019 is the cutoff for the loan data provided by CAC to the Office of the Attorney General. The default rates for loans in 2015 and 2016 are likely to rise after December 31, 2019.

61. There is a close inverse correlation between the level of loan defaults, on the one hand, and CAC's expected collection rate at origination, on the other. The lower CAC's expected collection rate at origination, the higher the level of default.

Massachusetts Default & Non-Performing Loan % By Score Interval, 2013-2016 Loan Originations

<u>Score Interval</u>	<u>Default %</u>	<u>Non-Performing %</u>	<u>Total %</u>
0 <= Score < 0.6	67.8%	2.9%	70.7%
0.6 <= Score < 0.65	61.4%	2.1%	63.5%
0.65 <= Score < 0.7	52.5%	2.9%	55.4%
0.7 <= Score < 0.75	45.4%	2.2%	47.6%
0.75 <= Score < 0.8	38.0%	1.8%	39.8%
0.8 <= Score < 0.85	27.8%	1.5%	29.3%
0.85 <= Score < 1	20.5%	0.8%	21.3%
Mean	43.8%	2.0%	45.9%
Score < .7	59.0%	2.7%	61.7%

62. The default rates alone do not fully describe the difficulty high-risk low-score Massachusetts borrowers have in repaying their CAC loans. For loans made between 2013 and the end of 2016, only 4.6 % of borrowers with CAC scores lower than 60% and 7.1 % of borrowers with scores lower than 70% were current for the entire term of their loans (or as of December 31, 2019, if the term had not ended before that date). The remaining roughly 93-95% of borrowers missed at least one payment and/or were delinquent at some point during the terms of their loans.

63. For the high-risk low-score borrowers, the financial difficulties come early in the terms of the loans. For Massachusetts borrowers taking out CAC loans in 2018, only 7.9% of borrowers with scores less than 60% and 10.7% of borrowers with scores lower than 70% were current on their loans between the origination date in 2018 and December 31, 2019. About 92%

of loans with scores lower than 60% and 89% of the loans with scores less than 70% either missed payments or experienced delinquency between their origination dates in 2018 and December 31, 2019—during, on average, *the first 18 months* of their loans.

<u>Score Interval</u>	2013-2016	2018
	% Loans Current Throughout Loan Term <u>as of 12/31/2019</u>	% Loans Current Throughout Loan Term <u>as of 12/31/2019</u>
Scores < .6	4.6%	7.9%
Scores < .7	7.1%	10.7%

64. One of the principal reasons for the close correlation between CAC's expected collection rate (or score) and the level of default, delinquency, and missed payments is the relationship between the expected collection rate and two factors known to predict the risk of default: the payment to income ratio (PTI), and the loan to value ratio (LTV). As CAC's expected collection rate drops, the average PTI of CAC's loans increases.

Average Payment to Income Ratio By Score Interval

<u>Score Interval</u>	<u>Number of Loans</u>	<u>Average Payment To Income</u>
0 <= Score < 0.6	3,778	13.5%
0.6 <= Score < 0.65	3,716	12.8%
0.65 <= Score < 0.7	4,498	12.2%
0.7 <= Score < 0.75	4,838	11.5%
0.75 <= Score < 0.8	4,163	10.6%
0.8 <= Score < 0.85	3,442	9.4%
0.85 <= Score < 1	1,552	8.8%
Mean	25,987	11.5%

65. Similarly, as the expected collection rate falls, the average LTV of CAC's loans increases.

Average Loan to Value (Retail) By Score Interval

<u>Score Interval</u>	<u>Number of Loans</u>	<u>Average LTV (Retail)</u>
0 <= Score <0.6	3,778	113.9%
0.6 <= Score <0.65	3,716	109.8%
0.65 <= Score <0.7	4,498	105.5%
0.7 <= Score <0.75	4,838	100.4%
0.75 <= Score <0.8	4,163	95.9%
0.8 <= Score <0.85	3,442	89.8%
0.85 <= Score <1	1,552	82.9%
Mean	25,987	101.4% ¹³

66. In spite of the poor performance of CAC's high-risk low-score loans, since 2013, CAC has steadily increased the percentage of high-risk low-score loans it makes in Massachusetts. In 2013 and 2014, 24% of CAC's Massachusetts loans had expected collection rates (or CAC scores) lower than 70%, and about 4% had scores lower than 60%. By 2019 these proportions had risen to 66% and 27% respectively.

¹³ The pattern of increasing LTV for lower scores is similar for wholesale LTVs:

Average Loan to Value (Wholesale) By Score Interval

<u>Score Interval</u>	<u>Number of Loans</u>	<u>Average LTV (Wholesale)</u>
0 <= Score <0.6	3,778	229.6%
0.6 <= Score <0.65	3,716	202.3%
0.65 <= Score <0.7	4,498	186.4%
0.7 <= Score <0.75	4,838	172.9%
0.75 <= Score <0.8	4,163	163.9%
0.8 <= Score <0.85	3,442	151.3%
0.85 <= Score <1	1,552	142.0%
Mean	25,987	181.5%

% of Massachusetts Loans By Score Interval & Origination Year

<u>Score Interval</u>	<u>2013</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>
0 <= Score <0.6	3%	4%	10%	17%	23%	24%	27%
0.6 <= Score <0.65	8%	7%	13%	18%	18%	18%	20%
0.65 <= Score <0.7	13%	13%	18%	19%	19%	20%	20%
0.7 <= Score <0.75	20%	21%	19%	18%	17%	18%	17%
0.75 <= Score <0.8	20%	22%	18%	14%	13%	12%	11%
0.8 <= Score <0.85	23%	23%	14%	9%	7%	7%	5%
0.85 <= Score <1	13%	9%	8%	4%	3%	1%	2%
Total	100%	100%	100%	100%	100%	100%	100%
Score < .7	24%	24%	41%	55%	60%	62%	66%

67. When high-risk low-score borrowers default, they do so early in their loans—after slightly more than a year on average. Defaulting 2013 and 2014 Massachusetts borrowers with CAC scores lower than 70% made, on average, 15.2 monthly payments before default; defaulting borrowers with scores lower than 60% made, on average, 13.1 monthly payments before default.

68. For borrowers, default is a financial disaster. When borrowers default, their cars are repossessed by CAC and sold at auction (unless the cost of repossession exceeds the auction value of the car). The average 2013 and 2014 Massachusetts borrower with a CAC score lower than 60% whose vehicle was repossessed made a down payment (including trade-in) of about \$1,600, and made loan payments of about \$3,400 prior to default. In exchange for the borrower's total payments of approximately \$5,000, the borrower had the use of the car, on average, for about a year and a half.¹⁴ During this period standard NADA retail depreciation of

¹⁴ There is typically a short lag between default and repossession.

the car averaged approximately \$1,200, about a quarter of the borrower's payment. Similarly, borrowers with CAC scores less than 70% paid about \$6,200—\$2,000 down and \$4,200 in loan payments—prior to default, while standard NADA retail depreciation for their cars averaged about \$1,600, slightly more than a quarter of the borrowers' payments.

2013-2014 Borrower Payments Prior To Repossession

	<u>Score < .6</u>	<u>Score < .7</u>
1. Total Down Payment	1,600	2,000
2. Loan Payment Prior To Default	3,400	4,200
3. Total Payment [(1) + (2)]	5,000	6,200
4. NADA Retail Depreciation	1,200	1,600
5. Ratio Total Payment to Depreciation	4.2	3.9

69. After repossession, the borrower's debt remains, but not the asset—the average borrower has a deficiency balance (or unpaid debt) after repossession of approximately \$9,000.¹⁵ CAC's policy is to continue to collect the debt indefinitely (or until it is paid).¹⁶ And while CAC markets its loans to consumers as an "opportunity to improve your credit score," defaulting borrowers—well over 50% of high-risk low-score borrowers—end up with substantially worse credit than before.

70. While default produces significant negative consequences for borrowers, it typically has few negative consequences for CAC. CAC, which does not expect borrowers to repay their loans in their entirety and scales its payments to dealers accordingly—and, in the case of the Portfolio program, pools loans to further reduce its risk—makes its expected collections and earns its expected return.

¹⁵ Computed as the average loan amount less the sum of borrower payments prior to default plus repossession recoveries.

¹⁶ In some cases, the statute of limitations may provide a time limit on CAC's collections.

2. CAC Recklessly Disregards the Risk of Default on High-Risk Loans

71. CAC approves all loan applications submitted through CAPS. For every loan applicant, CAPS automatically presents financing packages for each car in the dealer's inventory. The financing packages include CAC's payment to the dealer, and show exactly how much profit the dealer is expected to make on each car sale.

72. On its website CAC markets its loans to consumers as providing "approval for everyone ...":

"We believe everyone deserves a second chance, which is why we enable dealers enrolled with Credit Acceptance to approve everyone, including customers with any of the following:

- Bad credit history
- No credit history
- Fixed income
- Unemployment income
- Multiple open auto loans
- Multiple repossessions
- Self-employed income
- Temporary income
- Bankruptcy Chapter 7
- Bankruptcy Chapter 13 (with court/trustee approval)."

(A screen shot is attached to the Complaint as Exhibit 1.)

73. The website also contains a testimonial from a consumer who states: "Credit Acceptance is a company that helps everyone regardless of their credit history."

i. ***CAC Ignores the Risk of Default When It Approves and Funds Its High-Risk Massachusetts Loans***

74. Between 2013 or earlier and the present, CAC did not consider or determine the likelihood that the borrower would default on the loan when it approved and funded its loans in Massachusetts. CAC did not and does not calculate the risk of default or evaluate the borrower's financial situation to determine the likelihood of default when deciding to make a loan.

75. While CAC has acknowledged that its expected collection rate—which measures the portion of the loan that will ultimately be repaid—reflects the riskiness of the loan, CAC does not use the expected collection rate to determine whether to approve or fund the loan. Nor is the expected collection rate used to determine the terms under which a consumer is approved or to set financing terms. Nor is it used to establish the interest rate of the loan.

76. The likelihood of default is not an input into or an output from CAC's collection model, and the likelihood of default has no effect on CAC's calculation of the expected collection rate. Instead, CAC's expected collection rate measures the amount of the loan CAC expects to collect *whether or not* the borrower defaults, and includes monies the borrower is expected to pay prior to default, as well as monies CAC expects to collect after default.

77. The expected collection rate of a loan is an average of the expected collections for loans with the same score. An expected collection rate of 70%, for instance, means CAC expects to collect 70% of the loan amount, on average, from all loans with this score. It does not matter to CAC (and CAC does not attempt to determine) whether this result is achieved with 100% of borrowers defaulting, and each borrower paying 70% of the loan, or with 50% of borrowers defaulting, each defaulting borrower paying 40% of the loan, and the remaining borrowers paying 100% of their loans. Each of these default levels produces an expected collection rate of 70%, each provides CAC with the same loan collection amounts, and each produces the same

return for CAC. A score of 70% reflects the expected collection of 70% of the loans *regardless of borrower defaults*.

78. When it approved and funded high-risk loans to Massachusetts borrowers between 2013 and earlier and the present, CAC did not determine or take into account the likelihood that the borrower would default on the loan. CAC did not consider the default rate, prospectively or retrospectively, when it decided to approve or fund its loans.

79. As a result, between 2013 or earlier and the present, there was no level of expected default at which CAC did not approve or fund a high-risk loan. Nor was there any level of expected default at which CAC lowered the interest rate of the loan, offered only to make a smaller loan, or adjusted the loan terms to reduce the likelihood of default for borrowers who were unlikely to repay their loans.

80. A loan made in complete disregard of the risk of default is an unfair loan.

ii. CAC Did Not Reasonably Believe at Origination That Massachusetts Borrowers Would Repay their High-Risk Loans

81. Unlike a traditional bank, which, when it makes a loan, reasonably believes the loan will be repaid, CAC makes no determination and has no belief at origination that the borrower will repay the loan. Between 2013 and 2019 no CAC loan in Massachusetts had an expected collection rate at origination of 100%, which (hypothetically) represents the expectation, at origination, that the entire amount of the loan will be repaid. No Massachusetts loan had an expected collection rate at origination of over 90%.¹⁷

¹⁷ The amount of the loan is the principal plus interest that accrues over the term of the loan. Some loans are paid in full before the end of the loan term (or pre-paid); these borrowers pay less interest, and thus pay less than 100% of the amounts of their loans. On average, borrowers who pay their CAC loans in full pay about 91% of their loans.

82. The average CAC Massachusetts loan between 2013 and 2019 had an expected collection rate, based on CAC's calculation at origination, of 70.1%. (About half the loans had lower expected collection rates.) While some loans with an expected collection rate of 70.1% will be fully repaid, CAC's *expectation* at origination is that it will collect, on average, 70.1 cents of every loan dollar. These collections will come from borrower payments, repossession recoveries, and deficiency collections after default; the borrower will be able to repay approximately 59.6 cents of every dollar of the average loan before defaulting, with the remaining collection of 10.5 cents of every loan dollar coming from repossession proceeds and deficiency collections after default.¹⁸

83. Because CAC does not expect the borrower to repay the loan and, instead, expects to collect 70.1 cents of every loan dollar on average, CAC pays the dealer about 44 cents for every loan dollar. As a result, CAC still earns its 40% return.¹⁹

84. The fact that CAC, at origination, does not reasonably believe the borrower will be able to repay the loan is not an oversight; it is a basic feature of CAC's business model and profit structure. Unlike a traditional lender, CAC's business model is based on making loans to borrowers—including high-risk borrowers with low CAC scores—who are not likely to repay their loans, and CAC's profit model involves making money on loans that are not repaid. By reducing its payment to dealers commensurate with the expected likelihood of loan repayment, CAC ensures that its return, on average, remains the same, no matter how much—or how little—of the loans it expects to collect.

¹⁸ The borrower and post-default payments in this paragraph, and in paragraphs 85 and 86, are based on the historical splits between borrower payments and post-default collections included in CAC's collection rate.

¹⁹ The 44% payment is CAC's upfront payment to the dealer; the 40% return takes into account any subsequent "holdback" payment CAC makes to the dealer once these funds are collected.

85. For Massachusetts high-risk loans with CAC scores lower than 60%, CAC's expectation at origination between 2013 and the end of 2019 was that it would collect, on average, 55.4 cents of every loan dollar. Of this amount, the average borrower would pay about 43.8 cents of every loan dollar before default, with the remaining collection of 11.6 cents coming from repossession proceeds and deficiency collections after default. CAC expected that these high-risk low-score borrowers, on average, were unable to repay even half of their loans before defaulting.

86. For loans with CAC scores less than 70%, CAC expected to collect about 62.4 cents of every loan dollar, on average, with the borrower repaying about 51.2 cents before default and the remaining 11.2 cents coming from repossession proceeds and deficiency collections after default.

87. For both groups of loans, CAC's expectation at origination was that the average high-risk borrower was unable to repay even the *principal amount* of the loan (with no interest).

88. A loan the lender does not reasonably believe the borrower is able to repay is an unfair loan.

3. CAC Knew or Should Have Known at Origination That Borrowers Were Unlikely to Be Able to Repay Their High-Risk Subprime Loans

89. When CAC approved and funded loans to high-risk low-score Massachusetts borrowers between 2013 or earlier and the present, CAC knew or should have known that the vast majority of high-risk loans were unlikely to be repaid. CAC knew or should have known that well over half of high-risk borrowers were unable to repay their loans—that high-risk low-score borrowers were *more likely than not* to default on their loans.

90. The performance of CAC's high-risk low-score loans has varied little over time. For high-risk loans with CAC scores lower than 70% (CAC expects at origination to collect less than 70 cents of every loan dollar), the default rate for loans originated between 2013 and the end of 2016 averaged 59% (as of the end of 2019), with the highest annual value .5% higher than average (59.5%) and the lower annual value 1.3% lower (57.7%). For high-risk loans with CAC scores lower than 60% (CAC expects at origination to collect less than 60 cents of every loan dollar), the average default rate for loans originated between 2013 and the end of 2016 was 67.8%, with the highest value 1.2% higher than average (69%) and the lowest value 3% lower (64.8%).

**Massachusetts High-Risk Borrower Default % By
Origination Year**

<u>Year</u>	<u>Score < .6</u>	<u>Score < .7</u>
2013	64.8%	58.4%
2014	69.0%	57.7%
2015	67.0%	59.4%
2016	68.5%	59.5%
Weighted Average	67.8%	59.0%

91. While CAC has said it does not use or calculate default rates, in documents provided to investors CAC defines a "Defaulted Contract" as "each Contract that has become 90 days delinquent, based on the date the last payment thereon was received by the Servicer, or has had an auction check posted to the account." CAC has told investors that its loans "entail a higher risk of *delinquency, default, and repossession* and higher losses than loans made to consumers with better credit." (Emphasis added; see Exhibit 2 to the Complaint) CAC collects and services its own loans, and as a part of its collection and servicing activities maintains data on the payment and nonpayment of the loans and is aware of the default status of each of its

loans. Between 2013 or earlier and the present CAC knew which loans defaulted, how many of the loans defaulted, and the scores of the loans that defaulted. While CAC did not consider or determine the likelihood of default in deciding to approve and fund its loans, when it made the loans (i) CAC knew, based on its own payment data, that the vast majority of its high-risk low-score loans defaulted; (ii) CAC knew that the level of defaults was consistent over time, with little year-to-year variation; and (iii) CAC knew that the nonpayment of loans was closely related to the CAC score (expected collection rate). CAC was aware of the “risk... of default” of its loans.

92. When it approved and funded its loans to Massachusetts borrowers between 2013 or earlier and the present, CAC had the data, the capability, and the opportunity to determine the likelihood of default for each of its Massachusetts loans—and to decline to fund loans to borrowers who were likely to default or alter loan terms to reduce the likelihood of default. CAC chose not to do so.

93. CAC also explicitly tracks loan “charge-offs”; a charged-off loan, according to CAC’s definition, is a loan that is either unpaid for 90 days or that has had an auction check posted to its account, *i.e.*, virtually identical to CAC’s definition of a defaulted loan. CAC calculates charge-off rates in the course of its business, but does not use charge-off rates or the likelihood of charge-off when it decides to approve or fund its loans.

94. Between 2013 or earlier and the present, CAC knew or should have known that its calculated loan score (expected collection rate) was closely related to the expected default rate of the loans. CAC knew or should have known that the score is mathematically equivalent to:

$$\text{Score} = D(A + B) + (1 - D)(C),$$

where “D” is the percentage of loans that default and “(1 – D)” the percentage of loans that do not default, “A” represents loan payments by defaulting borrowers prior to default, “B” represents repossession and other post-default recoveries, and “C” represents the payments by borrowers who repay their loans in full.²⁰

95. For high-risk loans originated between 2013 and the end of 2015 with CAC scores lower than 70%, the average values of A, B and C were about .32, .18, and .91 respectively, giving an expected default percentage embedded in CAC’s score of about 60%.²¹ The actual default rate for 2013-2016 high-risk loans with CAC scores lower than 70% (as of December 31, 2019) was 59.0%.

96. For high-risk loans originated between 2013 and the end of 2015 with CAC scores lower than 60%, the average values of A, B and C were about .29, .17, and .91 respectively, giving an expected default percentage embedded in CAC’s score (expected collection rate) of about 68%. The actual default rate for 2013-2016 loans with CAC scores lower than 60% (as of December 31, 2019) was 67.8%.

97. When CAC approved and funded its high-risk low-score loans to Massachusetts borrowers with scores less than 70% between 2013 or earlier and the present, CAC knew or should have known that a substantial majority of these loans were unable to be repaid. CAC knew or should have known that most of its high-risk low-score loans would default. CAC had both the means and the opportunity to determine the likelihood of default of each of its high-risk loans—and prior to approving and funding the loan to decline funding, to alter the loan terms,

²⁰ A, B, and C represent percentages of total expected collections in loan dollars; D represents the percentage of loan dollars.

²¹ These values and the values in ¶ 96, are based on closed loans.

decrease the loan size, or change the loan approval and funding process in order to reduce or mitigate the risk of default for these high risk borrowers. But CAC did none of these things.

98. CAC knew or should have known that Massachusetts borrowers with CAC scores lower than 70% were unlikely to repay their loans. CAC knew or should have known that these high-risk borrowers were *more likely than not* to default on their loans.

99. Loans the lender knew or should have known at origination are unlikely to be repaid are unfair loans.

C. CAC'S UNFAIR DEBT COLLECTION PRACTICES

100. CAC is a creditor and collects debts in Massachusetts. When CAC's Massachusetts borrowers miss loan payments on their CAC loans, CAC's collection employees immediately make a collection call to the borrower, typically within one day of a missed payment due date.

101. Between 2012 and mid-2018, it was CAC's stated policy to call or attempt to call any individual delinquent borrower as many as 8 times per day. Massachusetts law permits no more than two collection calls per week.

102. From 2012 through mid-2018, CAC made about 2 million collection calls to about 9,000 delinquent borrowers in Massachusetts, or about 200 collection calls to each borrower, on average, for the purpose of collecting debts. Of the 2 million calls, about 1.7 million, or about 170 per borrower, exceeded the two calls per 7 day period limit required by Massachusetts debt collection regulations. Borrowers received calls, on average, for 74 days, with each (not necessarily consecutive) day having, on average, between 2 and 3 unlawful calls.

Estimated Total Call Violations

<u>Description</u>	<u>Amount</u>
1 Number of Calls	1,772,145
2 Number of Delinquent Accounts with Calls	8,843
3 Earliest Date of Call in Data	7/14/2014
4 Latest date of Call in Data	6/30/2018
5 Number of Eligible Calls ²²	1,675,140
6 Number of Accounts in (2) w Eligible Calls	8,700
7 Number of Violations	1,533,767
8 Number of Accounts in (2) w Violations	8,202
9 Average Violations Per Account [(7) / (2)]	173
10 Average number of Days a Delinquent Account Receives Calls	74
11 Number of Violations Per Account Per Day [(9) / (10)]	2.35
12 Percent of Calls that were Violations [(7) / (1)]	86.5%
13 Estimated Additional Calls 1/1/2012 to 7/1/2014	227,848
14 Estimated Additional Violations [(12) x (13)]	197,200
15 Total Estimated Violations [(7) + (14)]	1,730,967

103. Multiple calls each day was the norm for CAC's collection system. About 90% of the time CAC called borrowers at least twice a day. CAC made 5 or more calls in a day to borrowers almost 30% of the time.

<u>Calls per day per borrower</u>	<u>% of Eligible Calls</u>
2 or more	89%
3 or more	70%
4 or more	42%
5 or more	28%

²² An "eligible call" is a call subject to a violation.

104. CAC was aware that consumers found the collection attempts to be oppressive and harassing. One consumer complained to CAC, "I am constantly harassed on a regular basis by this company" and was left "a barrage of ominous voicemails ...where nobody said a word." Another stated, "I keep getting collection calls ... I am harassed day and night. ... I have to call them 1-2 times [a] week begging for the calls to stop." (See Exhibit 3 to the Complaint)

105. About 10% of the borrowers called by CAC received over 500 unlawful calls, with a maximum number of 3,187 violations.

106. CAC's repeated violations of Massachusetts collection call regulations were unfair or deceptive acts or practices.

D. CAC'S UNFAIR PRE-SALE AND POST-SALE NOTICES OF DEFICIENCY

107. CAC repossesses vehicles from consumers who default on their CAC car loans. When a deficiency remains after the repossession and auction of the vehicle, CAC collects this deficiency from borrowers.

108. Between 2013 or earlier and 2018, CAC provided consumers whose cars were repossessed with pre-sale notices entitled, "NOTICES OF OUR PLAN TO SELL PROPERTY[.]" These notices read, in part:

"We have your vehicle described above because you broke promises in our agreement. We will sell the vehicle at private sale sometime after [DATE OMITTED]. A sale could include a lease or license.

The money that we get from the sale (after paying our permitted costs) will reduce the amount you owe. If we get less money than you owe, you may still owe us some or all of the difference. If we get more money than you owe, you will get the extra money, unless we must pay it to someone else.

You can get the property back at any time before we sell it by paying us the full amount you owe (not just the past-due payments), including our permitted expenses. To learn the exact amount you must pay, call us at (800) 716-7376.

If you want us to explain to you in writing how we have figured the amount that you owe us, you may call us at (800) 716-7376 or write us at Credit Acceptance Corporation, 25505 West Twelve Mile Road, Attention Redemption Department, Southfield, Michigan 48034 and request a written explanation."

109. The CAC pre-sale notices describe the deficiency as the difference between the amount owed by the borrower and "[t]he money that we get from the sale (after paying our permitted costs)..." CAC's pre-sale notices did not describe the deficiency amount as based on the "fair market value" of the repossessed vehicle in these notices.

110. When CAC sold the vehicles it repossessed, CAC provided post-sale notices to the consumers. These notices read, in part:

"NOTICE OF DISPOSITION OF REPOSSESSED VEHICLE. Credit Acceptance Corporation disposed of the above-referenced vehicle on [DATE OMITTED] at the following location: [ADDRESS OMITTED].

NOTICE OF DEFICIENCY. After applying the proceeds from the disposition of the repossessed vehicle to your payment obligation, a deficiency in the amount of \$[AMOUNT OMITTED] remains. Unless applicable law provides that you are not liable for the deficiency amount, you are obligated to pay the deficiency amount to Credit Acceptance Corporation. Please call the toll-free number above to make appropriate arrangements.

EXPLANATION OF DEFICIENCY. The amount of the deficiency was calculated as follows:

1. As of *[DATE OMITTED]*, the total amount of your obligation was \$*[AMOUNT OMITTED]*.
2. The amount of proceeds received from the disposition of the vehicle was \$*[AMOUNT OMITTED]*.
3. The total amount of your obligation after deducting the amount of proceeds received from the disposition of the vehicle is \$*[AMOUNT OMITTED]*.
4. The total amount of expenses incurred in retaking possession, holding, preparing for disposition, processing, and disposing of the vehicle is \$*[AMOUNT OMITTED]*.
5. The total amount of credits to your account, which includes any payments received since the date in Item 1 above and other credits to which you are known to be entitled, including rebates of interest (or credit service charges) or ancillary product premiums (such as a service contract or GAP) is \$*[AMOUNT OMITTED]*.
6. The amount of the deficiency is \$*[AMOUNT OMITTED]*."

111. Between 2013 or earlier and 2018, in its post-sale notices, CAC explained the deficiency as the difference between the amount owed by the borrower and "the amount of the proceeds received from the disposition of the vehicle." The post-sale notices did not describe or explain the deficiency calculation as based on the fair market value of the vehicle.

112. Under Massachusetts law pre-sale and post-sale deficiency notices to consumers who default on their car loans and whose cars are repossessed and sold by the lender must state that the deficiency (if any) is calculated based on the fair market value of the vehicle. When the lender calculates the deficiency, the lender must use the fair market value of the vehicle in the calculation.

113. When a deficiency remains after the repossession and auction of the vehicle, CAC collects this deficiency from borrowers. Between 2013 or earlier and 2018, when CAC collected the deficiency amounts from borrowers, it did not calculate the deficiency amounts based on the

fair market value of the repossessed vehicles. CAC did not include a description of the calculation of the deficiency amount based on the fair market value of the repossessed vehicles in the pre-sale notices and a detailed explanation of the same calculation in its post-sale notices. CAC's deficiency notices and collections injured borrowers.

114. Between 2013 or earlier and 2018, CAC calculated the deficiency amount, and explained the calculation, as the difference between the amount of the proceeds received from the disposition of the repossessed vehicle and the total amount of a consumer's obligation under the defaulted car loan.

115. CAC's pre-sale and post-sale deficiency notices were in violation of Massachusetts law and were unfair to consumers.

E: UNFAIR OR DECEPTIVE ACTS OR PRACTICES IN CONNECTION WITH MARKUPS BASED ON CUSTOMERS' CREDIT

116. The price markups on cars sold to CAC borrowers with low CAC scores are substantially higher than the markups on cars sold to borrowers with higher scores. The markups, which range from about 37% to 68% on average, consistently increase as CAC's expected collection rate decreases, and are highest for borrowers with the lowest CAC scores. These increased markups—and the increase in the prices of low-score borrowers' cars—are based on the poor credit of the borrowers.

Massachusetts Loans by Score Interval: Vehicle Price to Vehicle Cost

<u>Score Interval</u>	<u>Number of Loans</u>	<u>Avg Vehicle Selling Price</u>	<u>Avg Vehicle Cost</u>	<u>Price to Cost Ratio</u>
	(1)	(2)	(3)	(4)
0 <= Score <0.6	3,778	10,957	6,533	1.68
0.6 <= Score <0.65	3,716	11,679	7,480	1.56
0.65 <= Score <0.7	4,498	11,990	8,148	1.47
0.7 <= Score <0.75	4,838	11,925	8,337	1.43
0.75 <= Score <0.8	4,163	11,539	8,152	1.42
0.8 <= Score <0.85	3,442	10,920	7,789	1.40
0.85 <= Score <1	1,552	10,013	7,284	1.37
All Loans	25,987	11,451	7,754	1.48

117. The increased markups for low-score borrowers are also plainly visible when the retail prices are compared to external indices, such as the Black Book prices. The markups are consistently higher for low-score borrowers; on average, the lowest-score borrowers receive the highest markup, and the markups decrease in strict linear fashion, so that the highest-score borrowers receive the lowest markups.

Massachusetts Loans by Score Interval: Vehicle Price to Black Book Retail Value

<u>Score Interval</u>	<u>Number of Loans</u>	<u>Avg Vehicle Selling Price</u>	<u>Black Book Retail Value</u>	<u>Price to Black Book Retail Ratio</u>
	(1)	(2)	(3)	(4)
0 <= Score <0.6	3,778	10,957	10,123	1.08
0.6 <= Score <0.65	3,716	11,679	11,222	1.04
0.65 <= Score <0.7	4,498	11,990	11,875	1.01
0.7 <= Score <0.75	4,838	11,925	12,205	0.98
0.75 <= Score <0.8	4,163	11,539	12,165	0.95
0.8 <= Score <0.85	3,442	10,920	11,907	0.92
0.85 <= Score <1	1,552	10,013	11,345	0.88
All Loans	25,987	11,451	11,607	0.99

118. Dealers increase their markups of the prices of low-score borrowers' cars in order to compensate for the reduction in CAC payments to dealers for the loans of low-score borrowers. When it funds a loan, CAC's policy is to deliberately and systematically reduce its payment to dealers (the full payment under the Purchase program and the upfront payment under the Portfolio program) as CAC's score drops; on average, CAC's payment to the dealer as a percent of the selling price is [REDACTED] lower for loans with CAC scores less than 60% than for scores greater than 80%. The CAC payment percentage *decreases* for low-score borrowers, and is lowest for the lowest-score borrowers, while the markup *increases* as the score drops and is highest for the lowest-score borrowers:

Massachusetts Loans by Score Interval: CAC Upfront Dealer Payment to Vehicle Price

<u>Score Interval</u>	<u>Number of Loans</u> (1)	<u>Avg CAC Upfront Dealer Payment</u> (2)	<u>Avg Vehicle Selling Price</u> (3)	<u>CAC Payment to Price Ratio</u> (4)
0 <= Score <0.6	3,778	[REDACTED]	10,957	[REDACTED]
0.6 <= Score <0.65	3,716	[REDACTED]	11,679	[REDACTED]
0.65 <= Score <0.7	4,498	[REDACTED]	11,990	[REDACTED]
0.7 <= Score <0.75	4,838	[REDACTED]	11,925	[REDACTED]
0.75 <= Score <0.8	4,163	[REDACTED]	11,539	[REDACTED]
0.8 <= Score <0.85	3,442	[REDACTED]	10,920	[REDACTED]
0.85 <= Score <1	1,552	[REDACTED]	10,013	[REDACTED]
All Loans	25,987	[REDACTED]	11,451	[REDACTED]

119. The differential markups based on the borrowers' credit scores counteract and in some cases eliminate the CAC payment reduction for loans of low-score borrowers. The effect of the increased retail car prices for low-score borrowers is to level out the spread between the dealer's cost and the dealer's compensation for low-score and high-score loans.

Massachusetts Loans by Score Interval: CAC Upfront Dealer Payment to Vehicle Cost

<u>Score Interval</u>	<u>Number of Loans</u> (1)	<u>Avg CAC Upfront Dealer Payment</u> (2)	<u>Avg Vehicle Cost</u> (3)	<u>CAC Payment to Cost Ratio</u> (4)
0 <= Score <0.6	3,778		6,533	
0.6 <= Score <0.65	3,716		7,480	
0.65 <= Score <0.7	4,498		8,148	
0.7 <= Score <0.75	4,838		8,337	
0.75 <= Score <0.8	4,163		8,152	
0.8 <= Score <0.85	3,442		7,789	
0.85 <= Score <1	1,552		7,284	
All Loans	25,987		7,754	

120. The differential markups substantially increase CAC payments for low-score loans, while reducing the variance of CAC's payments to dealers across expected collection rates. Regression analysis of these relationships shows just how significant they are. Regressing the selling price to vehicle costs against CAC scores yields an R squared value of 91%, which shows a very high correlation between the markups and the borrowers' scores. Regressing the vehicle selling price to Black Book retail values against CAC scores produces an R squared value of 97%, showing a nearly perfect linear relationship between the markups and the scores. The T-Statistic for these regressions shows that there is essentially a 100% probability that the score and markup are inversely related.

121. The increased markup of vehicles based on the borrowers' low CAC scores is a hidden finance charge. The amount of this finance charge is the amount of the markup attributable to the borrower's score, together with the increased interest resulting from this markup. This finance charge was not disclosed to CAC borrowers with low scores, who received inaccurate and understated disclosures of the finance charges of their loans.

122. In addition, the finance charge attributable to the excess markups must be included in the calculation of the borrower's interest rate. Because virtually all of CAC's loans are made at or very close to the 21% Massachusetts usury ceiling, properly including the amount of the hidden finance charge attributable to the markup in the calculation of the low-score borrowers' interest rates results in a recalculated or actual interest rate higher than 21% for virtually all CAC borrowers whose cars were marked up as a result of their credit scores.

123. The failure to disclose hidden finance charges in CAC loans is an unfair or deceptive act or practice. A loan with an actual interest rate above 21% violates the Massachusetts usury cap and is unfair.

F. UNFAIR OR DECEPTIVE ACTS OR PRACTICES IN CONNECTION WITH THE SALE OF VEHICLE SERVICE CONTRACTS

1. The Vehicle Service Contract Primarily Benefits CAC

124. A vehicle service contract ("VSC") is a promise to pay for the repair or replacement of certain components of the vehicle in the event of a mechanical failure. CAC provides dealers with access to VSCs through CAC's agreements with two VSC administrators (or third-party providers, "TPPs"), and the dealers then sell the VSCs to CAC's borrowers. The parties to the VSCs are the TPPs (First Automotive Service Corporation, which is a subsidiary of SouthwestRe ("SWRE"), and Wynn's Extended Care, Inc.) and the CAC borrowers.

125. The VSCs are purchased by CAC's borrowers when they buy their cars, and the retail cost of the VSC is financed as part of the CAC loan. CAC only permits dealers to finance the purchase of VSCs offered by CAC.

126. When borrowers repair their cars, they submit claims (similar to insurance claims²³) to the TPP. The TPP determines whether the claim is covered under the terms of the VSC. CAC ultimately pays some of the VSC claims itself; a wholly owned subsidiary of CAC, VSC Re Company, reinsures the VSC claims, and thus collects the entire amount paid by the borrower for the VSC, less certain administrative costs and fees. CAC participates in profit-sharing for the remainder of the claims.

127. The VSC covers only repairs of specific parts directly referred to in the contract itself. A typical CAC VSC contains the following coverage provision:

“Subject to the terms and conditions of this Contract, We will pay, or reimburse You, for the reasonable costs to repair or replace any or all of the following listed Covered Parts (for the coverage specified below that You have purchased) that fail as the result of a Covered Breakdown, subject to the exclusions listed in the EXCLUSIONS—WHAT THIS CONTRACT DOES NOT COVER” section below. For convenience, the Covered Parts are listed next to the Vehicle systems to which they relate. The Vehicle systems listed are not Covered Parts.

STANDARD COVERAGE

1. **Engine** – Engine Block and Cylinder Heads are covered when damaged due to a failure of an internally Lubricated Part. All internal Lubricated Parts, harmonic balancer, turbocharger, supercharger, timing gear, chain and bolt, head gasket, timing cover, timing belt, intake and exhaust manifolds, valve covers, oil pan and engine mounts.
2. **Transmission** – Transmission case and all internal Lubricated Parts, torque converter, transmission mounts, flex plate, and vacuum modulator.
3. **Drive Axle(s)** – Drive axle housing and all internal Lubricated Parts, drive shafts, universal joints, and constant velocity joint unless failure was caused by neglected, torn, cracked or perforated constant velocity joint boot. See exclusion for constant velocity joint boots.
4. **Transfer Case** – Transfer case and all internal Lubricated Parts.
5. **Steering** – Steering gear box, or rack, and all internal Lubricated Parts, power steering pump, steering column shaft, and steering column shaft couplings, pitman arm, idler arm, tie rod end(s), and drag link.
6. **Electrical** – Alternator, voltage regulator, starter motor & drive, and starter solenoid, Ignition module and windshield wiper motor(s).

²³ Unlike insurance, however, VSCs are not regulated.

7. **Air Conditioner** – Condenser, compressor, compressor clutch & pulley, idler pulley & idler pulley bearing, evaporator, receiver dryer and orifice tube, and blower motor. (only if the air conditioner is factory or dealer installed equipment)

8. **Suspension** – Radius arm, control arms, control arm shafts, bearings and bushings, king pin and king pin bushings, strut bar and bushings, stabilizer bar, stabilizer link, stabilizer bushing, spindle, wheel bearings, and torsion bars.

9. **Cooling** – Water pump, engine cooling fan motor, radiator, radiator fan, and fan clutch.

10. **Fuel** – Fuel delivery pump, fuel injectors, and fuel tank.

11. **Brake** – Standard and ABS brake system master cylinder, ABS accumulator, ABS control module, ABS pump, ABS motor, ABS reservoir and ABS wheel speed sensors, power brake cylinder, vacuum assist booster, compensating valve, disc brake caliper(s), wheel cylinder(s), hydraulic lines and hydraulic line fittings.

High Tech Coverage (Included on all Vehicles with 0 – 100,000 Miles Only)

12. **High Tech** includes components listed under Standard Coverage above plus: Power seat motor, power antenna motor, power window motor(s), power door lock actuator, fuel pressure regulator, sunroof motor, convertible top motor, driver information gauge indicators relating to the operation of the Vehicle (burned out lights/lamps are not covered), body control module, control dash power supply, cruise control module and servo/transducer, fuel sending unit, fuel gauge, metal fuel delivery lines, idle speed motor, manifold pressure sensor, manifold temperature sensor, throttle position sensor, mass air flow sensor, oxygen sensor, coolant temperature sensor, vehicle speed sensor, camshaft position sensor, crankshaft angle sensor, E.C.M., primary fuel injection computer, and temperature control programmer.

13. **Seals and Gaskets** – Leaking seals and gaskets on any Covered Part listed above, provided that the Vehicle had 100,000 miles or less on the Vehicle Sale Date.

Minor loss of fluid or seepage is considered normal and not considered a Covered Breakdown.²⁴

128. A typical CAC VSC contains the following exclusions:

***EXCLUSIONS — WHAT THIS CONTRACT DOES NOT COVER**

A. This Contract provides no benefits or coverage and We have no obligation under this Contract for:

1. A Breakdown caused by lack of customary, proper or Vehicle Manufacturer's specified maintenance.
2. A Breakdown caused by contamination of or lack of proper fuels, fluids, coolants or lubricants, including a Breakdown caused by a failure to replace seals or gaskets in a timely manner.
3. A Breakdown caused by towing a trailer, another vehicle or any other object unless Your Vehicle is equipped for this use as recommended by the Vehicle Manufacturer.

²⁴ This provision is contained in the contract administered by SWRE. A copy of the complete SWRE VSC is contained in Exhibit 8 to this complaint; a copy of the standard contract used by the other TPP, Wynn's Extended Care, Inc., is contained in Exhibit 9.

4. Repair of any parts in connection with a Covered Repair when those parts are not necessary for the completion of the Covered Repair or were not damaged by the failure of a Covered Part. Such repair or replacement is an improvement to Your Vehicle and is not covered by this Contract.
5. Pre-existing damage, or a Breakdown that occurred before Your purchase of this Contract, either of which would have been obvious and apparent if that component was inspected at time of purchase.
6. A Breakdown caused by or involving modifications or additions to Your Vehicle unless those modifications or additions were performed or recommended by the Vehicle Manufacturer.
7. A Breakdown caused by off-roading, misuse, abuse, racing or any form of competition.
8. Any cost covered by a repair facility's or part supplier's guarantee, or any cost which would normally be covered by a Vehicle Manufacturer's warranty or a dealer warranty required under state law, whether or not such warranty is in force respecting Your Vehicle.
9. Costs of other damages caused by the failure of a part listed in this Contract as an excluded part.
10. Damage to the Vehicle caused by continued Vehicle operation after the Breakdown of a Covered Part.
11. Any liability, cost or damages You incur or may incur to any third parties, other than for Covered Parts.
12. A Breakdown caused by rust or corrosion.
13. A Breakdown caused by collision, fire, electrical fire or meltdown, theft, freezing, vandalism, riot, explosion, lightning, earthquake, windstorm, hail, water, flood or acts of public enemy or any government authority, or for any hazard insurable under standard physical damage insurance policies whether or not such insurance is in force respecting Your Vehicle.
14. A Breakdown outside the continental United States or Canada.
15. Loss of use, loss of time, lost profits or savings, inconvenience, commercial loss, or other incidental or consequential damage or loss that results from a Breakdown.
16. Liability for damage to property, or for injury to, or death of, any person arising out of the operation, maintenance or use of Your Vehicle whether or not related to a Breakdown.
17. Any cost or other benefit for which the Vehicle Manufacturer has announced its responsibility through any means including public recalls or factory service bulletins.
18. Any part not covered, or excluded, by the original Vehicle Manufacturer's warranty.
19. Loss of compression through gradual failure of rings and valves.
20. Constant velocity joint boots.
21. A gradual reduction in performance capability due to day-to-day routine operation.
22. The maintenance services and parts described in paragraph 1 under "Your Obligations" or in the Vehicle Manufacturer's maintenance schedule for Your Vehicle.
23. Other normal maintenance services and parts, including, without limitation, engine tune-up, spark plugs, ignition wires, distributor cap and rotor, carburetor, EGR valve, batteries, filters, lubricants or fluids, air conditioning refrigerant or engine coolant (except when such lubricants, fluids, refrigerant or coolant must be replaced as part of the repair or replacement of a Covered Part), all hoses and belts that are not specifically listed under

"Covered Parts." wiper blades, brake pads and shoes, brake rotors and drums, suspension alignment, tires, wheel balancing, shock absorbers, exhaust system, friction clutch disc and pressure plate, and clutch throw out bearing.

24. Glass, glass framework and fastening adhesives, sealed beam head lamps, light bulbs, lenses, HID assemblies, Safety restraint systems (including air bags), trim, moldings, bright metal, upholstery and carpeting, paint, sheet metal, body panels, structural framework and structural welds.

25. After market accessories or non-original equipment, components and systems not installed by the Vehicle Manufacturer, including, without limitation, anti-theft systems, radio/speaker equipment, telephones, cruise control and sunroof.

26. GPS navigation systems and TV/Video/DVD/Entertainment Systems.

27. Damage to a Covered Part caused by a part that is not a Covered Part.

28. Repairs performed without Our prior authorization.

29. To any parts or systems that are considered alternative fuel or electric/hybrid vehicle related.

B. In addition, this Contract provides no benefits or coverage and We have no obligation under this Contract if:

1. The Vehicle odometer fails, or for any reason does not record the actual mileage of Your Vehicle after purchase date and You do not have it repaired and the mileage certified within thirty (30) days of failure date.

2. Your Vehicle is used for business, deliveries, construction or commercial hauling, or as a postal vehicle, taxi, police car or other emergency vehicle.

3. You rent Your Vehicle to someone else.

4. Your Vehicle is equipped with a snow plow or used to plow snow.

5. You are using or have used Your Vehicle in a manner that is not recommended by the Vehicle Manufacturer.

6. Your Vehicle is modified from the Vehicle Manufacturer's original specifications.²⁵

129. Unless the borrower is an expert in car repairs or mechanics, and unless the borrower understands the relationship between the coverage and exclusion provisions, there is no way for the borrower to determine what repairs are covered and what repairs are not covered under the VSC. There is no way for the borrower to determine whether common repairs and services are covered or not covered by the VSC, how expensive the services are that are covered and not covered, how much of the cost of repairs the VSC will pay, and whether the purchase of the VSC is or is not cost-effective.

²⁵ Like the coverage provision, these exclusions appear in the standard SWRE contract. See Exhibit 8.

i. Financial Impact of VSC on the Borrower

130. Between 2013 and 2019, about 80% of eligible CAC borrowers in Massachusetts purchased and financed VSCs as part of their CAC loans.

131. The average VSC purchased by a Massachusetts CAC borrower between 2013 and 2019 had a retail price to the borrower of about \$1,600. All VSCs purchased by CAC borrowers were financed as part of their CAC loans; on average, this added \$2,450 to the amount of the loan (the VSC retail price financed, on average, over the 55-month term of the loan).

132. The VSC purchase increased the amount of an average loan, and of the borrower's average monthly payment, by about 15%.

133. In the aggregate, VSC purchases added \$51 million to the loans of CAC borrowers in Massachusetts between 2013 and 2019 purchasing a VSC.

134. Based on historical data, over the term of the VSC the average CAC VSC paid an estimated \$478 for repairs for each Massachusetts borrower purchasing a VSC. This is slightly less than 20% of the cost of the VSC to the borrower (20 cents for every loan dollar financing the VSC). The remainder of the loan payment attributable to the VSC was split between the dealer, who receives a sales commission for each of the VSC sales, the TPP, and CAC.

135. About a third of all claims for repairs submitted by borrowers under their VSCs between 2013 and 2019 were denied or unpaid, primarily because the TPP decided they were not covered or were excluded under the terms of the VSC.

ii. Financial Impact of VSCs on the Dealer

136. The VSC purchase affects the dealer's compensation in two ways. First, CAC pays the dealer a sales commission of \$385. This is part of the upfront payment to the dealer (the total payment under the Purchase program).

137. Second, the increased loan amount attributable to the VSC purchase and financing raises the upfront loan payment to the dealer from CAC (the payment is a percentage of the total loan amount). Assuming an average dealer upfront payment of 44% of the loan and an average increase in the loan amount of about \$2,450, the dealer receives an additional upfront payment of about \$1,075.²⁶

iii. Financial Impact of VSC Sales on CAC

138. During the 2013-2019 period the average expected collection rate for CAC's Massachusetts loans with VSC's was 70.2%; of the \$2,450 loan cost attributable to the VSC purchase, CAC expected to collect \$1,721. CAC used a portion of the borrower's VSC payment to pay the dealer a \$385 sales commission, to pay an \$90 administrative fee to the TPP, and about \$40 in ceding costs and taxes, and to cover the average claims cost of \$478. Most of the remainder of the borrower's loan payment attributable to the VSC, or about \$727, was retained by CAC.

VSC Contribution TO CAC's Return²⁷

1. VSC Portion of Loan	2,450
2. VSC Expected Collection	1,721
3. Dealer Payment for VSC	385
4. TPP Administrative Fee	90
5. Ceding Costs and Taxes	40
6. VSC Claim Costs	478
7. VSC Borrower Payments After Costs	727

²⁶ While the increased upfront payment rate for loans in the Portfolio program did not raise the ultimate compensation to dealers, it shifted "holdback" funds CAC would otherwise have paid the dealer once they were collected to the upfront portion of the dealer's compensation.

²⁷ Items (3) – (5) are based on CAC Service Contract Program Agreements.

139. Between 2013 and 2019, CAC's income from VSCs contributed substantially to CAC's profit on the loan transaction.

2. Borrowers Were Required to Purchase VSCs to Obtain CAC Loans

140. According to CAC's internal policy, a dealer may not require the borrower to purchase a VSC. The purchase of a VSC must be optional. This policy is contained in CAC's internal compliance manual: "[i]t's important that our dealers not require customers to purchase ancillary products. They're optional." (See Exhibit 4 to the complaint.) CAC's policy is communicated to dealers via CAPS (CAC's computer portal) and is stated in the loan contract itself.

141. In spite of CAC's policy, between 2013 or earlier and the present numerous CAC borrowers have been required to purchase VSCs in order to obtain CAC loans. Dealers told borrowers, variously, that "CAC would not approve my loan without purchasing a vehicle service contract," that "my application for my car loan would not be approved unless I purchased the vehicle service contract," and that "the VSC was a mandatory condition of approving my loan." (Sample affidavits of borrowers required to purchase VSCs to obtain their CAC loans are attached to this complaint as Exhibit 5.)

142. Between July 31, 2014 and September 20, 2017 CAC received about 25 complaints directly from Massachusetts consumers who stated that they were required by dealers to purchase VSCs as a condition of obtaining their CAC loans. CAC's compliance manual requires CAC to investigate each such borrower complaint. However, CAC simply refused to believe the complaining borrowers, never interviewed other customers of the dealer to determine whether the dealer required VSC purchases from other consumers, and never questioned the dealer's sales employees about the required VSC purchase. CAC records show only one note

regarding a CAC contact with a representative of a dealer, who stated that the "VSC is included with the loan."

143. CAC determined that none of the complaints from Massachusetts consumers who stated they were required to purchase VSCs "had merit" (CAC's term). CAC's records of the complaints either provide no reason for its "no merit" determination or simply note that the loan contract states the VSC is optional.

144. An internal email provides the only record of a CAC employee's analysis related to one of the complaints; the full text states:

"We received a complaint from a consumer that this dealer advised her that the VSC was a mandatory purchase to get financing (although it is listed on RIC as optional). I checked the dealer's penetration for VSC sales and it appears to consistently be at 100% - indicating they may in fact be telling consumers it is required when it is not. Can you please discuss this with the dealer so that they understand they cannot require a consumer to purchase any of the ancillary products? Please follow up with me once you have had that conversation with the dealer."

(Exhibit 6 to the complaint).

145. Notwithstanding the CAC employee's determination that the dealer's penetration rate was consistently "100%, indicating they may in fact be telling consumers it is required when it is not," CAC found this complaint, like all the others, to be of "no merit."

146. CAC's compliance policy required CAC employees, according to the manual, to review the dealer's VSC "penetration rate" (the percentage of the dealer's CAC borrowers who purchased VSCs) in order to determine "if this complaint is part of a larger trend." From 2013 through 2019, numerous Massachusetts dealers had very high VSC penetration rates between 90% and 100% of their CAC loans. (A complete list of Massachusetts CAC dealers' VSC penetration rates is attached to the complaint as Exhibit 7.) During this period, CAC did not investigate any high-penetration dealers' VSC sales or interview any customers of high-

penetration dealers to determine whether they were required to purchase VSCs. Nor did CAC take any action to remedy the required VSC purchases or to prevent dealers from requiring CAC borrowers to purchase VSCs.

147. As a result of borrowers' statements to CAC and of CAC's knowledge of dealers' VSC penetration rates in Massachusetts, CAC knew or should have known that borrowers were required to purchase VSCs in order to obtain CAC loans.

3. The Required Purchase of a VSC to Obtain a CAC Loan Is a Hidden Finance Charge

148. The dealers that required CAC borrowers to purchase VSCs in order to obtain their loans did not require cash payers to purchase VSCs. As a result, the VSC penetration rates for CAC borrowers were often much higher than for cash customers. At one such CAC dealer in Massachusetts, Haddad Auto Group, 100% of CAC borrowers purchased VSCs, while 16% of cash payers purchased VSCs.

149. In some cases, dealers told CAC borrowers that if they increased their cash down-payments, often by several thousand dollars, they would no longer be required to purchase a VSC.

150. The required purchase of a VSC as a condition of obtaining a CAC loan is a hidden finance charge. The amount of this finance charge is the retail cost of the VSC to the borrower, together with interest attributable to this cost. This finance charge was not disclosed to CAC borrowers, who received inaccurate and understated disclosures of the finance charges of their loans.

151. Because the required purchase of a VSC to obtain a CAC loan is a finance charge, the VSC cost must be included in the calculation of the borrower's interest rate on the CAC loan.

Virtually all of CAC's loans are made at or very close to the 21% Massachusetts usury ceiling, and properly including the amount of the hidden finance charge attributable to the required VSC purchase in the calculation of the borrower's interest rate results in a recalculated or actual interest rate higher than 21% for practically all CAC borrowers required to purchase VSCs.

152. The failure to disclose hidden finance charges in CAC loans is an unfair or deceptive act or practice. A loan with an actual interest rate above 21% is unfair.

G. UNFAIR OR DECEPTIVE ACTS OR PRACTICES IN CONNECTION WITH THE SALE OF CAC'S LOAN SECURITIES

153. When CAC securitizes its loans and sells them to investors, the offering documents describe the characteristics of the loans in order to disclose to investors the nature of the collateral underlying the securities. Typically, however, the offering documents for CAC's securities only describe the characteristics of a portion of the loans, those committed to the securities before a specified date, referred to in the offering memorandum as the "Cut-off Date," and transferred to the security trust as of the Closing Date of the securitization. Loans that will be selected after the Closing Date, during what the offering documents refer to as the "Revolving Period," are not described in the offering documents.

154. Instead, the offering documents typically disclose that loans purchased during the Revolving Period after the Closing Date

may have characteristics that differ somewhat from the characteristics of the Loans and Contracts as of the initial Cut-off Date... and may be of a different credit quality and seasoning.... The Originator and the Seller do not expect that the characteristics of the Loans and related Contracts purchased during the Revolving Period will be materially different from those transferred on the Closing Date....²⁸ (Emphasis added)

²⁸ This disclosure is taken from CAALT 2016-3 PPM (Exhibit 10).

155. According to CAC's offering documents, the characteristics of loans placed selected by CAC after the Closing Date (and not described in the offering materials) may "differ somewhat" and "may be of a different credit quality and seasoning" but the offering documents explicitly state that CAC does not expect the characteristics of these loans to be "materially different from those transferred on the Closing Date."

156. In numerous CAC securitizations, however, a key characteristic of the loans CAC selects after the Closing Date is in fact materially different from the same characteristic of loans committed before the Closing Date and described in the offering documents. Loans selected by CAC for its securities after the Closing Date have consistently lower CAC scores or expected collection rates, on average, than the loans described in the offering documents. (This means CAC expects at origination that borrowers will repay a smaller portion of the loans.) For seven securitizations between September 2014 and continuing through the end of 2017, the average CAC scores of Massachusetts loans placed in the securities trusts in the revolving period was lower than the average CAC scores of the loans placed in the trusts prior to the Closing Date for each of the securitizations. The difference in the average CAC scores ranged from 2.8% to 6.0%; overall, the average reduction in the scores for the Massachusetts loans in these securitizations was about 4.4%.²⁹

²⁹ These values are based on data on all loans valued as of October 31, 2017.

Average Loan Scores Before and After Closing Date

<u>Security</u> (1)	<u>Closing Date</u> (2)	<u>Expected Collection Rate</u>		
		<u>On or Before (2)</u> (3)	<u>After (2)</u> (4)	<u>Difference</u> (5)
Credit Acceptance Funding LLC 2014-2	9/25/2014	75.3%	69.6%	5.7%
Credit Acceptance Funding LLC 2015-1	1/29/2015	75.9%	69.9%	6.0%
Credit Acceptance Funding LLC 2015-2	8/20/2015	73.3%	70.5%	2.8%
Credit Acceptance Funding LLC 2016-2	5/12/2016	74.0%	70.1%	3.9%
Credit Acceptance Funding LLC 2016-3	10/27/2016	70.2%	66.8%	3.4%
Credit Acceptance Funding LLC 2017-1	2/23/2017	71.8%	68.4%	3.4%
Credit Acceptance Funding LLC 2017-2	6/29/2017	71.8%	66.0%	5.8%

157. CAC selected the loans for its securitizations both before and after the Closing Date. CAC controlled the selection process, controlled the characteristics and credit quality of the loans it selected, and controlled the disclosures to investors.

158. CAC had complete information concerning the characteristics of the loans selected for inclusion in the securitizations after the Closing Date. This information was non-public, and it was never disclosed to investors.

159. CAC provided data to the Attorney General's Office for all (countrywide) loans in two securitizations, one from 2016 and one from 2017, Credit Acceptance Funding LLC 2016-2 and Credit Acceptance Funding LLC 2017-2. The CAC scores for loans selected by CAC after the Closing Date (and not described in the offering documents) were 3.3% lower for LLC 2016-2 and 3.0% lower for LLC 2017-2 than the average scores for the loans selected before the Closing Date.

160. The expected collection rate of CAC's loans is the single most important characteristic in evaluating the underlying credit quality of the loan.

161. In its 10-K CAC considers any deviation from the expected collection rate to be "material" when it is greater than 1%. Discrepancies of 4.2%, 2.3%, 2.5%, 1.5%, and 1.5% are

stated to be “materially better” results, while differences of -2.3% and -1.3% are stated to be “materially worse” results. Discrepancies smaller than 1% are not considered material.

162. The differences in the loan characteristics between the loans selected by CAC for its securitizations before and after the Closing Date are material. These differences should have been disclosed to investors.

163. CAC deliberately and intentionally selected loans after the Closing Date that had credit characteristics that were materially worse than the characteristics of the loans CAC selected and included in the securitization prior to the Closing Date. CAC did so consistently and repeatedly, in successive securitizations. CAC told investors that it did not expect the credit characteristics of the loan to differ materially when CAC knew that the characteristics were materially different because CAC itself selected loans after the Closing Dates with scores that were materially different from the scores of the loans selected prior to the Closing Date. CAC willfully deceived investors concerning the credit characteristics of the loans.

164. CAC knew or should have known that the statements in its offering documents that CAC “does not expect that the characteristics of the Loans and related Contracts purchased during the Revolving Period will be materially different from those transferred on the Closing Date” are materially false and misleading.

165. CAC’s false and misleading statements concerning the expected collection rates of loans in its securities and CAC’s failure to disclose the material differences in the expected collection rates of the loans CAC placed in the securitizations before and after the Closing Dates are unfair or deceptive acts or practices.

V. TOLLING AGREEMENT AND FIVE DAY LETTER

166. CAC's unfair or deceptive acts or practices continued from 2013 or earlier through the present.

167. The terms of CAC's loans from 2013 or later continued until 2016 or later.

168. With respect to the securities claims, the period from January 29, 2018 through the present has been tolled for statute of limitations purposes by a tolling agreement, as amended and extended, entered into between the Office of the Attorney General and CAC. For all other claims, the period from November 19, 2019 through the present has been tolled for statute of limitations purposes by a tolling agreement, as amended and extended, entered into between the Office of the Attorney General and CAC. All claims that would be timely if brought on November 19, 2019 are timely as of the date of the filing of this complaint. Securities claims that would be timely if brought on January 29, 2018 are timely as of the date of the filing of this complaint.

169. On August 19, 2020, the Attorney General's Office sent CAC a letter in accordance with the provisions of G.L. c. 93A, § 4, paragraph 2.

VI. CAUSES OF ACTION

First Cause of Action

(Unfair Loans; Violation of G.L. c. 93A, 940 C.M.R. 3.16)

170. The Commonwealth repeats and realleges paragraphs 1 through 169 of the Complaint.

171. CAC has engaged in unfair or deceptive acts or practices in connection with the approval and funding of high-risk subprime loans in Massachusetts in violation of G. L. c. 93A,

§ 2 and 940 C.M.R. 3.16. Such unfair or deceptive acts or practices include, without limitation, the following:

- i. approving and funding Massachusetts subprime automobile loans in complete and reckless disregard of the risk of default;
- ii. approving and funding Massachusetts subprime automobile loans when CAC did not reasonably believe at origination that Massachusetts borrowers would be able to repay their loans;
- iii. approving and funding high-risk Massachusetts subprime automobile loans that CAC knew or should have known were unlikely or unable to be repaid in accordance with their terms.

172. CAC knew or should have known that its acts or practices were in violation of G. L. c. 93A, § 2 and 940 C.M.R. 3.16.

173. CAC approved and funded loans and acquired payments from consumers by means of its unfair or deceptive acts or practices, causing consumers to suffer an ascertainable loss by paying out funds, incurring debts, and/or incurring the costs and other harm that resulted from default on CAC's loans.

174. CAC's unfair or deceptive acts or practices resulted in harm to consumers.

Second Cause of Action

(Unfair collection practices; Violation of G.L. c. 93A, 940 CMR 7.00 et seq., 7.04 (1) (f))

175. The Commonwealth repeats and realleges paragraphs 1 through 174 of the Complaint.

176. CAC has engaged in unfair or deceptive acts or practices in connection with the collection of loans in Massachusetts in violation of G. L. c. 93A, § 2. Such unfair or deceptive acts or practices include, without limitation, excess contacts and harassment of consumers, and the making of about 1.7 million collection calls in violation of Massachusetts law and regulations.

177. CAC knew or should have known that its acts or practices were in violation of G. L. c. 93A, § 2.

178. CAC acquired payments from consumers by means of its unfair or deceptive acts or practices, causing consumers to suffer an ascertainable loss by paying out funds. CAC caused consumers to experience emotional harm through its harassing acts and practices.

179. CAC's unfair or deceptive acts or practices resulted in harm to consumers.

Third Cause of Action

(Unfair repossession collections and notices; Violation of G.L. c. 93A, G.L. c. 106, G.L. c. 255B)

180. The Commonwealth repeats and realleges paragraphs 1 through 179 of the Complaint.

181. CAC has engaged in unfair or deceptive acts or practices in connection with its loan deficiency collections and its pre-sale and post-sale repossession notices to borrowers in Massachusetts in violation of G. L. c. 93A, § 2, c. 106, § 9-614-616, and c. 255B, §20B. Such unfair or deceptive acts or practices include, without limitation, CAC's failure to calculate the deficiency amounts owed by borrowers based on the fair market value of the repossessed vehicle, CAC's collection of deficiency amounts from borrowers that were not based on the fair

market value of the repossessed vehicle, and CAC's failure to include a description of the calculation of the deficiency amount based on the fair market value of the repossessed vehicle in the pre-sale notices and a detailed explanation of the same calculation in its post-sale notices.

182. CAC knew or should have known that its acts or practices were in violation of G.L. c. 93A, § 2.

183. CAC acquired payments of deficiency amounts from consumers by means of its unfair or deceptive acts or practices, causing consumers to suffer an ascertainable loss by paying out funds.

184. CAC's unfair or deceptive acts or practices resulted in harm to consumers.

Fourth Cause of Action

(Improper repossession notices; *parens patriae*, Violation of G.L. c. 106)

185. The Commonwealth repeats and realleges paragraphs 1 through 184 of the Complaint.

186. G.L. c. 106, §§ 9-614 and 9-616 requires repossession notifications to include certain disclosures to borrowers, including a description of any liability for a deficiency remaining on the borrowers' loans.

187. CAC did not include a description of the calculation of the deficiency amount based on the fair market value of the repossessed vehicles in the pre-sale notices and a detailed explanation of the same calculation in its post-sale notices. By failing to properly describe the calculation of the deficiency in its notifications to borrowers, CAC failed to comply with G.L. c. 106, §§ 9-614 and 9-616.

188. Massachusetts consumers are entitled to statutory damages under G. L. c. 106, § 9-625(c)(2) for CAC's improper notices.

Fifth Cause of Action

(Unfair markups based on the credit of borrowers; Violation of G.L. c. 93A, G.L. c. 140D, G.L. c. 255B; assignee liability)

189. The Commonwealth repeats and realleges paragraphs 1 through 188 of the Complaint.

190. CAC has engaged in unfair or deceptive acts or practices in connection with the markup of vehicle prices for cars sold to CAC borrowers with low expected collection rates (or CAC scores) that are substantially higher than the markups on cars sold to borrowers with higher expected collection rates in Massachusetts in violation of G. L. c. 93A, § 2, c. 140D, §§ 4, 5, and c. 255B, §14. Such unfair or deceptive acts or practices include, without limitation, approving, funding, and acquiring through assignment automobile loans in Massachusetts that fail to disclose that the increased markup of vehicle prices based on the credit of the borrower is a finance charge, and approving, funding, and acquiring through assignment loans that, as a result of the increased markup of vehicle prices based on the credit of the borrowers, have properly calculated interest rates in excess of 21%.

191. CAC knew or should have known that its acts or practices were in violation of G. L. c. 93A, § 2.

192. CAC acquired payments from consumers by means of its unfair or deceptive acts or practices, causing consumers to suffer an ascertainable loss by paying out funds.

193. CAC's unfair or deceptive acts or practices resulted in harm to consumers.

Sixth Cause of Action

(Unfair required purchase of vehicle service contracts; Violation of G.L. c. 93A,
G.L. c. 140D, G.L. c. 255B; assignee liability)

194. The Commonwealth repeats and realleges paragraphs 1 through 193 of the
Complaint.

195. CAC has engaged in unfair or deceptive acts or practices in connection with the
required purchase of vehicle service contracts in Massachusetts in violation of G. L. c. 93A, § 2;
c. 140D, §§ 4, 5, and c. 255B, §14. Such unfair or deceptive acts or practices include, without
limitation, approving, funding, and acquiring through assignment automobile loans in
Massachusetts that fail to disclose that the required purchase of a vehicle service contract as a
condition of obtaining a loan is a finance charge, and approving, funding, and acquiring through
assignment loans that, as a result of the required purchase of a vehicle service contract, have
properly calculated interest rates in excess of 21%.

196. CAC knew or should have known that its acts or practices were in violation of G.
L. c. 93A, § 2.

197. CAC acquired payments from consumers by means of its unfair or deceptive acts
or practices, causing consumers to suffer an ascertainable loss by paying out funds.

198. CAC's unfair or deceptive acts or practices resulted in harm to consumers.

Seventh Cause of Action

(Deceptive statements in offering documents for securities; Violation of G.L. c. 93A, 940 C.M.R. 3.16)

199. The Commonwealth repeats and realleges paragraphs 1 through 198 of the Complaint.

200. CAC has engaged in unfair or deceptive acts or practices in connection with the sale of securities to Massachusetts investors in violation of G.L. c. 93A, § 2 and 940 C.M.R. 3.16. Such unfair or deceptive acts or practices include, without limitation, selling, facilitating, or causing the sale of securities to Massachusetts investors by means of (i) materially false or misleading statements in the offering documents for such securities that CAC "does not expect that the characteristics of the Loans and related Contracts purchased during the Revolving Period will be materially different from those transferred on the Closing Date" and (ii) CAC's failure to disclose the material differences in the characteristics of the loans selected for the securities before and after the Closing Dates.

201. CAC knew or should have known that its acts or practices were in violation of G.L. c. 93A, § 2 and 940 C.M.R. 3.16.

202. CAC willfully violated G.L. c. 93A, § 2 and 940 C.M.R. 3.16 with respect to its securities sales to Massachusetts investors and its securitization of Massachusetts automobile loans.

203. CAC acquired payments from Massachusetts investors by means of its unfair or deceptive acts or practices, causing them to suffer an ascertainable loss by purchasing securities (i) that were riskier than CAC represented them to be, and/or (ii) they would not have purchased but for CAC's misrepresentations and nondisclosures, and/or (iii) at higher prices than they

would have paid in the absence of CAC's misrepresentations and nondisclosures and/or (iv) that paid lower interest rates than they would have accepted in the absence of CAC's misrepresentations and nondisclosures.

204. CAC's unfair or deceptive acts or practices resulted in harm to consumers.

VII. RELIEF REQUESTED

WHEREFORE, the Commonwealth requests that this Court:

A. Issue a permanent injunction restraining CAC, its agents, employees, and all other persons and entities, corporate and otherwise, in active concert or participation with any of them from:

- i. approving and funding subprime automobile loans in Massachusetts in complete and reckless disregard of the risk of default; approving and funding high-risk Massachusetts subprime automobile loans CAC does not reasonably believe at origination that Massachusetts borrowers will be able to repay; approving and funding high-risk Massachusetts subprime automobile loans that CAC knew or should have known are unlikely or unable to be repaid in accordance with their terms;
- ii. approving, funding, or accepting assignment of loans of borrowers who are required as a condition of funding to purchase vehicle service contracts without disclosure of the cost of the required vehicle service contracts as finance charges; approving, funding, or accepting assignment of loans of borrowers who are required as a condition of funding to purchase vehicle service contracts when the actual interest rates of the loans calculated

using the cost to borrowers of the required vehicle service contracts exceed 21%;

- iii. approving, funding, or accepting assignment of loans when the prices of the vehicle have been marked up based on the borrowers' credit without disclosure of the markup as a finance charge; approving, funding, or accepting assignment of loans of borrowers when the prices of the vehicle have been marked up based on the borrowers' credit and the actual interest rates of the loans calculated using the cost to borrowers of the markup exceed 21%;
- iv. making false and/or misleading representations and/or omissions to actual or potential securities investors in Massachusetts concerning the characteristics of loans collateralizing CAC's automobile-loan backed securities.

B. Order CAC to pay restitution to Massachusetts borrowers harmed by CAC's misconduct, including but not limited to (i) refunding payments made by borrowers whose subprime loans are unfair and (ii) paying three times any ascertainable losses of money or property to Massachusetts securities purchasers.

C. Order CAC to disgorge all monies collected by CAC as a result of its unfair loan collection acts and practices (or all monies CAC would not have collected but for its unfair collection calls) in violation of Massachusetts law.

D. Order CAC to pay statutory damages to consumers under G. L. c. 106, § 9-625(c)(2) for CAC's improper repossession notices.

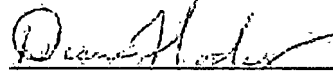
E. Order CAC to offer to Massachusetts purchasers of CAC's securities the option to tender their securities in exchange for payment or to receive damages payments in the amount that would be provided under M.G.L. c. 110A, § 410(a)(2).

F. Order CAC to pay the Commonwealth civil penalties of \$5,000 for each violation of G. L. c. 93A, § 2, and costs, including reasonable attorneys' fees, pursuant to G. L. c. 93A, § 4.

G. Grant such other and further relief as this Court deems just and proper.

Dated: August 28, 2020

COMMONWEALTH OF MASSACHUSETTS
MAURA HEALEY
ATTORNEY GENERAL



Glenn Kaplan BBO #567308

Peter Leight BBO #631580

Madonna Cournoyer BBO # 642060

Diana Hooley BBO # 685418

David Lim BBO # 685364

Michael Sugar BBO # 683901

Office of the Attorney General

One Ashburton Place, 18th Floor

Boston, MA 02108

617-963-2240

Glenn.Kaplan@mass.gov

Peter.Leight@mass.gov

Madonna.Cournoyer@mass.gov

Diana.Hooley@mass.gov

David.Lim@mass.gov

Michael.Sugar@mass.gov